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### IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

APPLICANT(S):

Li et al.

APPLICATION NO.:

09/664,226

ART UNIT:

3624

FILING DATE:

September 18, 2000 EXAMINER:

Colbert, Ella

TITLE:

Auction Management

Mail Stop AF Commissioner for Patents P.O. Box 1450 Alexandria, VA 22313-1450

# **COMMENTS ACCOMPANYING REQUEST** FOR PRE-APPEAL BRIEF CONFERENCE

In response to the Office Action mailed on September 12, 2005, we respectfully submit these Comments:

Remarks begin on page 2 of this paper; and

**Conclusion** begins on page 5 of this paper.

In accord with the Official Gazette Notice of July 12, 2005, this paper accompanies a Pre-Appeal Brief Request for Review, a Notice of Appeal, and the fee for the filing of the Notice of Appeal.

Through the enclosed petition and accompanying check for the required fee, we hereby request a one-month extension of the date for reply to January 12, 2005.

The Applicants believe that no additional fees are due with this Response, but the Commissioner is hereby authorized to charge any required fees to Deposit Account No. 07-1700.

#### REMARKS

#### The Claims Satisfy 35 U.S.C. § 112

Claims 1 and 27 were said to lack antecedent basis for the elements "subset of suppliers," "selected suppliers," and "selected subset of suppliers." Claims 1 and 27 both recite a "set of suppliers," from which a "subset of suppliers" is subsequently selected. Any "set" will inherently include a number of "subsets," and accordingly this rejection is clear error.

The claims were also said to lack agreement for use of both "selected suppliers" and "selected supplier." A selected "subset of suppliers," like any set, may include any number of suppliers. When one supplier is claimed, the claims use the singular form; when more than one supplier is claimed, the claims use the plural form. This rejection is also clear error.

#### The Drawings Satisfy 37 C.F.R. § 1.121(d)

Corrected drawings were requested because "in fig.'s 6, 8-14, 15A, 15B, 16A, 16B, 17, 19, 20A, 20B, and 21-28 the shaded portion of the drawing figure's are not legible. The shading needs to be removed in order to read the text in the drawing figures." Office Action at 3.

A copy of Figures 6, 8–14, 15A, 15B, 16A, 16B, 17, 19, 20A, 20B, and 21–28 were obtained using the Office's PAIR system from the formal drawings filed on August 26, 2002, and are attached to these Comments as Exhibit A. Each of these figures bears the stamp of the Office of Initial Patent Examination, and <u>none</u> of these figures includes either shading or unreadable text. Accordingly, this rejection is clear error.

## The Rejection Over Shkedy Fails to Consider Two Essential Elements of the Pending Claims

The Examiner has failed to consider two essential elements of independent claims 1 and 27 in rejecting those claims over United States Patent No. 6,260,024 to *Shkedy*. Accordingly, we respectfully submit that this rejection is improper and that claims 1 and 27, and the claims that depend therefrom, are allowable over *Shkedy*.

Independent claims 1 and 27 both recite, in part: (1) "utilizing, by a programmed computer, the <u>objective function</u> to select a subset of suppliers and determine an <u>optimal award schedule</u> for at least partial satisfaction of said requisition utilizing the selected suppliers," and (2) where the "objective function" includes "<u>non-price criteria</u>." (emphasis added) We

respectfully submit that *Shkedy* neither teaches nor suggests the use of non-price criteria in an objective function or the determination of an optimal award schedule.

In overview, the present invention relates to "a computer-implemented method for determining an optimal award schedule for at least partial satisfaction of [a] requisition." Application at ¶ 0011. A prospective buyer specifies constraints that prospective suppliers are invited to satisfy. Id. at ¶ 0012. The buyer's constraints may include traditional price terms, such as a maximum price per item, but they may also include non-price terms such as time to satisfaction, quality, and quantity. Id. at ¶ 0013.

Prospective suppliers submit bids responsive to the buyer's constraints and the system determines an optimal award schedule from those bids. <u>Id.</u> That is, in a typical auction in accord with the present invention, numerous suppliers will propose bids that more or less satisfy the buyer's requirements. The inventive system will then determine which subset of those bidding suppliers will optimally satisfy the bid, evaluating each bid against the price and non-price terms specified by the buyer. "The optimal combination of suppliers, together with the list of items to be ordered from each supplier, is referred to as an <u>optimal award schedule</u>." <u>Id. at ¶ 0006</u> (emphasis added). The "objective function" is the formulation of the buyer's price and non-price constraints and the seller's constraints in its bid that is used by an optimization engine to determine the optimal award schedule. <u>Id. at ¶ 0143</u>.

In contrast, *Shkedy* describes a system for aggregating individual buyers' purchase requirements into a single collective purchase requirement, and providing that collective purchase requirement to sellers willing to bid on the collective purchase requirement. *Shkedy* at Abstract. *Shkedy* teaches a simple "winner-take-all" system, where one seller providing the best bid wins all of the business. Id. at col. 3, ln. 55-57; col. 3, ln. 9-11; col. 6, ln. 29-30. In contrast, the applicants' invention creates an "optimal award schedule" that allows multiple sellers to satisfy a buyer's requisition in an optimal fashion, Application at ¶ 0006, and is recited in the claims as "utilizing, by a programmed computer, the objective function to select a subset of suppliers and determine an optimal award schedule for at least partial satisfaction of said requisition utilizing the selected suppliers" (emphasis added).

Moreover, while *Shkedy* allows prospective buyers to specify non-price criteria, such as a quantity, a pool date, and an outside delivery date, *Shkedy* at col. 5, ln. 13-16, *Shkedy* does not

appear to teach that a prospective seller may provide bids that do not conform to these non-price criteria, or how to weigh a prospective seller's non-conforming non-price criteria against a bidded price. In contrast, as recited in the claims, the applicant's invention allows a prospective buyer to specify an "objective function" including "non-price criteria" that adjusts a supplier's bidded price by a "penalty term that depends on non-price factors associated with that supplier, such as the supplier's performance attributes, and a measure of how important the buyer considers those performance attributes." Application at ¶ 154. The use of the objective function including non-price criteria allows for the creation of an award schedule that is optimal with respect to both price and non-price criteria. Again, *Shkedy* appears to simply teach a winner-based all system that lets one seller providing a bid with the best price win all of a collectively-aggregated sale that includes non-price requirements.

The rejection of independent claims 1 and 27 is solely based on *Shkedy*, and the preceding discussion demonstrates how *Shkedy* fails to satisfy two essential elements of these claims. For these reasons, we respectfully submit that the rejection of independent claims 1 and 27 over *Shkedy* is clear error and we request the withdrawal of these rejections. The remaining claims, which depend therefrom, are therefore allowable.

## **CONCLUSION**

In light of the foregoing, we respectfully submit that there are clear errors in the Examiner's rejections and that the Examiner has failed to consider essential elements of the independent claims in the present rejection.

Date: January <u>5</u>, 2006

Tel. No.: (617) 570-1408 Fax No.: (617) 523-1231 Respectfully submitted,

Robert S. Blasi, Esq. (Reg. No. 50,389)

Attorney for Applicants GOODWIN PROCTER LLP

Exchange Place 53 State Street Boston, MA 02109

A/1588776

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Appln No.: 09/664,226 Applicant(s): Ge Li et al. AUCTION MANAGEMENT



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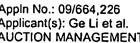
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Appln No.: 09/664,226



Applicant(s): Ge Li et al. **AUCTION MANAGEMENT** 

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electronic procurement Auction Info	
Show All Bidders No Start Date 05/11/2000 14:31	
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View Requisition Items	
View Bids 1-3 of 3	
Level Selection Item Type Category Description Qty	ice Action
e sshcat1 Lumber 2 x 4 x 8 ft 400	Bid Messages
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strategic sourcing	Auction Name Auction Status Auction Type		
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Message Center	Enter the product Quantity per Bundle, Price per Bundle, and any other fields before clicking the Submit	indle, and any other fields before clic	cking the Submit
View Bids	button: Bundle	Bundle Description:	
Logout	Seller Bundle Code Bundle of Materials	Materials	
	Comment of Constru	Bundled bid for Req 1 A of Construction RFQ $\nabla$	
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	020408 2×4×8 400	400	021190
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	O Adail Print					lle, and any other fields before	Bundle Description:	terials	or Req 1 ►	Bundle Composition:	Seller	Quantity per Bundle	400	1000	100	Bundle Pricing:	Cost	Price per Bundle	7350			
1. 1	S		жасаон турв	 End Date 07/11/2000 14:30	Create Bundled Bid	Enter the product Quantity per Bundle, Price per Bundle, and any other fields before clicking the Submit	button: Bundle D	Seller Bundle Code Bundle of Materials	Comment Bundled bid for Req 1 of Construction RFQ	Bundle Co	Buyer	Line Item Name Desired Quantity	020408 <u>2 x 4 x 8</u> 400	021210 2x12x10 1,000	0406005 PW 4 x 8 x 1/2 100	Bundle	Number of Bundles	Minimum Maximum	1 10	Save		
Pass - Microsoft	File Edit View Favorites   Charles   Charles	Address D http://qa03/en/index.html		oloctronic amountament	application for	strategic sourcing				Supplier Home	Message Center	View Bids	Logout		Неір							



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		Fistory					following are the scenarios created for Auction Electrical	Purchasing Cost (000's)	No scenarios defined enario Delete					
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ePass - Microsoft Internet Explorer	ig.	•	d		electronic procurement application for strategic sourcing			Buyer Home Message Center	Manage Products Configure Partners	Manage Auctions View Bids	Analyze Bids Logout	<u>_</u>		0000
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s http:/	
	Home > Analyze Bids Center > New Scenario
nent	Auction: Electrical Scenario:
application for strategic sourcing	
(	New Scenario
	Please fill in the following information for the scenario.
erass [	Name
Buver Home	Description
Message Center	Recommend Secondary Vendors Lowest Total Cost
Manage Products Configure Partners	Number of Secondary Vendors 2
Manage Auctions	Rules Manual Awards Dusiness Rules
View Bids	
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2000	Price 150.00%
	Add Factor Select a Factor ▼
Help	Save Cancel
	tenerini e-o I O
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Stop Refresh Home Search Favoriles History Mail Print Edit Di	읟
S D http://ga03/en/index.html	<b>☆</b>
10f1	
Home > Analyze Bids > Business Rules	
electronic procurement Scenario: Price Only application for strategic sourcing	
Setup Manual Awards Business Rules	
Pass The following is a list of business rules defined for scenario Price Only on Auction Electrical	
Type Scope Partner Min Max Actions	
Buyer Home Capacity BR Quantity Limit RFQ Each Partner 50% Wizard	
Message Center  Create Rule  Delete Rules	
Configure Partners	
Manage Auctions View Bids	
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Busin	Business Rule Wizard (Step 1 of 4)	step 1 of 4)		
Please name the rule	BR Quantity Limit			-
electronic procurement  Please give a short application for description	ввату			
Please give a long description	Limit Vendors to no more than 50% of Bid	s than 50%	<b>4</b> •	
Do you want to ignore the rule for now?	O'Yes O No			
			· •	
	⊙ Capacity	Award business to a preferred Partner of place a limit on the amount of business a Partner is awarded.	referred Partner of nount of business a	
Please specify the type of rule	O Vendor Count	Limit the number of Partners that receive awards	artners that receive	
	O Cost	Limit the purchasing cost (excluding performance based costs)	ost (excluding osts)	
	O Performance Cost	Limit the total purchasing cost (including performance based costs)	ing cost (including osts)	
	Next >> Cancel			
		O Local Intranet	intranet	7
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Applicant(s): Ge Li et al. AUCTION MANAGEMENT

G. 25



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	Busine	Business Rule Wizard (Step 2 of 4)
	Nате	BR Quantity Limit
electronic procurement	Short Description	вкоту
strategic sourcing	Long Description	Limit Vendors to no more than 50% of Bid
(	Ignore For Now?	No
<u></u>	Туре	Capacity
ePass		
Buyer Home Message Center Manage Products Configure Partners Manage Auctions View Bids Analyze Bids Logout	Please specify the scope  of the rule  C  Second Se	O Auction O Requisition (Each Requisition) ▼ Apply only to the specified requisition. O Category (Each Category) ▼ Apply only to the specified category O Item (Each Item) ▼ Apply only to the specified item
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Applicant(s): Ge AUCTION MANA

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s http:		A GO    FIUK
	Busine	Business Rule Wizard (Step 3 of 4)
	Name	BR Quantity Limit
electronic procurement	Short Description	ввату
strategic sourcing	Long Description	Limit Vendors to no more than 50% of Bid
	Ignore For Now?	No
j)	Туре	Capacity
ePass	Scope	RFQ
Buyer Home  Message Center  Manage Products  Configure Partners  Wanage Auctions  View Bids  Analyze Bids  Logout	Please specify the Partner affected by the rule <- Back	(Each Partner)  Apply the rule to the selected Partner.  Next >>  Cancel
<b>○</b> Done		] [ ] [ ] [ ] Local infranet

FIG. 26

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		Business Rule Wizard (Step 4 of 4)
	Name	BR Quantity Limit
electronic procurement	Short Description	вяату
strategic sourcing	Long Description	Limit Vendors to no more than 50% of Bid
(	Ignore For Now?	No
j	Туре	Capacity
ePass	Scope	RFQ
	Partner	Each Partner
Buyer Home	Please specify the m	Please specify the minimum and/or maximum value that should be awarded
Message Center  Manage Products  Contigure Partners	Select the units the minimum/maximum value are specified in	O Units O Dollars O Percentage
Manage Auctions View Bids	Minimum Amount to	Specify this value if you require the Partner to be awarded a certain amount. You can leave this field
Analyze Bids Logout	Award	blank if there is no required minimum. For percentage, specify 0.5 for 50%
	Maximum Amount to Award	Specify this value if you want to limit the maximum amount awarded to the organization. You can leave this field blank if there is no maximum. For percentage, specify 0.5 for 50%
Help		<< Back Finish Cancel
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* 0		
•	Home > Analyze Bids C	> Analyze Bids Center > Setup > Edit Scenario
electronic procurement	Auction: Electrical Scenario: Scene Quality	
application for strategic sourcing		
	Edit Scenario	
⊕ ⊕	Please fill in the following information for the scenario.	on for the scenario.
ePass	Name	Scene Quality
	Description	Price/Quality Analysis
Message Center	Recommend Secondary Vendors	Lowest Total Cost
Manage Products		
Configure Partners	Number of Secondary Vendors	
Manage Auctions	Rules	Manual Awards Dusiness Rules
View Bids		
Analyze Bids	Perfo	Performance Factor Weightings
Logout	Price	100.00%
	Quality	50.00%
	Save	Cancel
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